

AMENDED IN ASSEMBLY JANUARY 26, 1998

AMENDED IN ASSEMBLY MAY 5, 1997

AMENDED IN ASSEMBLY APRIL 21, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 247

Introduced by Assembly Member Scott

February 11, 1997

An act to amend ~~Section 53071 of the Government Code~~ Sections 833 and 836 of the Penal Code, relating to ~~firearms~~ peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 247, as amended, Scott. ~~Firearms: preemption~~ Peace officers: warrantless arrests.

(1) Existing law authorizes a peace officer to search for dangerous weapons any person whom he or she has legal cause to arrest, whenever he or she has reasonable cause to believe that the person possesses a dangerous weapon.

This bill instead would authorize a peace officer to search for dangerous weapons any person whom he or she has reasonable cause to believe unlawfully possesses a dangerous weapon.

(2) Existing law specifies circumstances under which a peace officer may make a warrantless arrest, including, among other things, whenever the officer has reasonable cause to believe that the person to be arrested has committed a public offense in his or her presence.

This bill would authorize a peace officer to make a warrantless arrest for the offense of carrying a concealed firearm whenever the officer has reasonable cause to believe that the person has committed the offense, the offense occurred within an airport, and the officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the offense.

~~Existing law expresses the intent of the Legislature to occupy the whole field of regulation of the registration or licensing of commercially manufactured firearms as encompassed by the Penal Code.~~

~~This bill would authorize any city or county to enact an ordinance by resolution to prohibit the sale, or otherwise regulate the sale, of firearms, and would declare that this authorization is declaratory of existing law.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 53071 of the Government Code~~

2 *SECTION 1. Section 833 of the Penal Code is*
3 *amended to read:*

4 833. A peace officer may search for dangerous
5 weapons any person whom he *or she* has ~~legal cause to~~
6 ~~arrest, whenever he has~~ reasonable cause to believe ~~that~~
7 ~~the person~~ unlawfully possesses a dangerous weapon. If
8 the officer finds a dangerous weapon, he *or she* may take
9 and keep it until the completion of the questioning, when
10 ~~he the officer~~ shall either return it or arrest the person.
11 The arrest may be for the illegal possession of the weapon.

12 *SEC. 2. Section 836 of the Penal Code is amended to*
13 *read:*

14 836. (a) A peace officer may arrest a person in
15 obedience to a warrant, or, pursuant to the authority
16 granted to him or her by Chapter 4.5 (commencing with
17 Section 830) of Title 3 of Part 2, without a warrant, may
18 arrest a person whenever any of the following
19 circumstances occur:

1 (1) The officer has reasonable cause to believe that the
2 person to be arrested has committed a public offense in
3 the officer's presence.

4 (2) The person arrested has committed a felony,
5 although not in the officer's presence.

6 (3) The officer has reasonable cause to believe that the
7 person to be arrested has committed a felony, whether or
8 not a felony, in fact, has been committed.

9 (b) Any time a peace officer is called out on a domestic
10 call, it shall be mandatory that the officer make a good
11 faith effort to inform the victim of his or her right to make
12 a citizen's arrest. This information shall include advising
13 the victim how to safely execute the arrest.

14 (c) (1) When a peace officer is responding to a call
15 alleging a violation of a domestic violence protective or
16 restraining order issued under the Family Code, Section
17 527.6 of the Code of Civil Procedure, Section 213.5 of the
18 Welfare and Institutions Code, or Section 136.2 of this
19 code, or of a domestic violence protective or restraining
20 order issued by the court of another state, tribe, or
21 territory and the peace officer has reasonable cause to
22 believe that the person against whom the order is issued
23 has notice of the order and has committed an act in
24 violation of the order, the officer may arrest the person
25 without a warrant and take that person into custody
26 whether or not the violation occurred in the presence of
27 the arresting officer. The officer shall, as soon as possible
28 after the arrest, confirm with the appropriate authorities
29 or the Domestic Violence Protection Order Registry
30 maintained pursuant to Section 6380 of the Family Code
31 that a true copy of the protective order has been
32 registered, unless the victim provides the officer with a
33 copy of the protective order.

34 (2) The person against whom a protective order has
35 been issued shall be deemed to have notice of the order
36 if the victim presents to the officer proof of service of the
37 order, the officer confirms with the appropriate
38 authorities that a true copy of the proof of service is on
39 file, or the person against whom the protective order was
40 issued was present at the protective order hearing or was

1 informed by a peace officer of the contents of the
2 protective order.

3 (3) In situations where mutual protective orders have
4 been issued under Division 10 (commencing with Section
5 6200) of the Family Code, liability for arrest under this
6 subdivision applies only to those persons who are
7 reasonably believed to have been the primary aggressor.
8 In those situations, prior to making an arrest under this
9 subdivision, the peace officer shall make reasonable
10 efforts to identify, and may arrest, the primary aggressor
11 involved in the incident. The primary aggressor is the
12 person determined to be the most significant, rather than
13 the first, aggressor. In identifying the primary aggressor,
14 an officer shall consider (A) the intent of the law to
15 protect victims of domestic violence from continuing
16 abuse, (B) the threats creating fear of physical injury, (C)
17 the history of domestic violence between the persons
18 involved, and (D) whether either person involved acted
19 in self-defense.

20 (d) Notwithstanding paragraph (1) of subdivision (a),
21 if a person commits an assault or battery upon his or her
22 spouse, upon a person with whom he or she is cohabiting,
23 or upon the parent of his or her child, a peace officer may
24 arrest the person without a warrant where both of the
25 following circumstances apply:

26 (1) The peace officer has reasonable cause to believe
27 that the person to be arrested has committed the assault
28 or battery, whether or not it has in fact been committed.

29 (2) The peace officer makes the arrest as soon as
30 reasonable cause arises to believe that the person to be
31 arrested has committed the assault or battery, whether or
32 not it has in fact been committed.

33 (e) *In addition to the authority to make an arrest*
34 *without a warrant pursuant to paragraphs (1) and (3) of*
35 *subdivision (a), a peace officer may, without a warrant,*
36 *arrest a person for a violation of Section 12025 when all of*
37 *the following apply:*

38 (1) *The officer has reasonable cause to believe that the*
39 *person to be arrested has committed the violation of*
40 *Section 12025.*

1 (2) *The violation of Section 12025 occurred within an*
2 *airport, as defined in Section 21013 of the Public Utilities*
3 *Code.*

4 (3) *The peace officer makes the arrest as soon as*
5 *reasonable cause arises to believe that the person to be*
6 *arrested has committed the violation of Section 12025.*

7 ~~is amended to read:~~

8 ~~53071. (a) It is the intention of the Legislature to~~
9 ~~occupy the whole field of regulation of the registration or~~
10 ~~licensing of commercially manufactured firearms as~~
11 ~~encompassed by the provisions of the Penal Code, and~~
12 ~~these provisions shall be exclusive of all local regulations,~~
13 ~~relating to registration or licensing of commercially~~
14 ~~manufactured firearms, by any political subdivision as~~
15 ~~defined in Section 1721 of the Labor Code.~~

16 ~~(b) Any city or county may enact an ordinance by~~
17 ~~resolution to prohibit the sale, or otherwise regulate the~~
18 ~~sale, of firearms. For purposes of this subdivision, the~~
19 ~~point of sale shall be the location of any retail~~
20 ~~establishment that sells the firearms.~~

21 ~~SEC. 2. The Legislature finds and declares that the~~
22 ~~amendment of Section 53071 of the Government Code~~
23 ~~made by Section 1 of this act does not constitute a change~~
24 ~~in, but is declaratory of, existing law.~~